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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on April 27, 2001, at the Hyatt Grand Champions Resort, Grand Salon AB Room, 44-600 Indian Wells Lane, Indian Wells, California.

2. **ROLL CALL**

Tom Flesh, President of the Board, called the General meeting to order at 10:30 a.m.

Present:	Edward Bayuk	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Frederick E. (Fritz) Hitchcock	Robin P. Parker
	Alan J. Skobin	Staff Counsel
	Solon C. Soteras	Michael Dingwell
	Glenn E. Stevens	Staff Counsel
	David W. Wilson	

Absent: Wendy Brogin

3. **APPROVAL OF THE MINUTES FROM THE MARCH 6, 2001, GENERAL MEETING**

Mr. Soteras moved to adopt the March 6, 2001, General Board meeting minutes. Mr. Wilson seconded the motion. The motion carried unanimously.

4. **BOARD MEMBER EDUCATION CONCERNING A PRESENTATION BY THE EXECUTIVE COMMITTEE AND STAFF OF THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION ON ISSUES OF INTEREST TO THE MOTOR VEHICLE INDUSTRY - BOARD DEVELOPMENT COMMITTEE**

Avery Greene, President of the California Motor Car Dealers Association ("CMCDA") made a brief comment highlighting the close working relationship between the Board and the CMCDA. Peter Welch, Director of Government and Legal Affairs, for the CMCDA, made a

presentation to the members concerning the impact of the automotive industry on California's economy and the number of new and used registrations for 2000. Mr. Welch was also available to answer member questions.

**5. CONSIDERATION OF PROPOSED RULING**

DUARTE & WITTING INC., dba NADER CHRYSLER-PLYMOUTH vs.  
DAIMLERCHRYSLER MOTORS CORPORATION  
Protest No. PR-1750-00

Consideration of the Administrative Law Judge's Proposed Ruling on Respondent's Motion to Dismiss, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Counsel for Protestant did not make an appearance. Gwen Young, Esq., of Wheeler, Trigg & Kennedy, P.C., represented Respondent. Comments were presented concerning the Proposed Ruling by Peter Welch.

The Public members of the Board deliberated in open session. Mr. Stevens moved to reject the Proposed Ruling and instruct Board staff to draft a Ruling which dismisses the protest without prejudice because it is possible for Protestant to file a protest containing a request for relief within the Board's jurisdiction. Mr. Bayuk seconded the motion. Mr. Soteris was not present for the vote. The motion carried unanimously.

**6. CONSIDERATION OF DECISION IN LIGHT OF JUDGEMENT DENYING THE PETITION FOR PEREMPTORY WRIT OF MANDATE**

SABA A. SABA, SBD PARTNERS, INC. and HONDA KAWASAKI  
SPORTCENTER vs. KAWASAKI MOTORS CORP., U.S.A.  
Protest No. PR-1633-98

Consideration of the Decision in light of the Superior Court's Judgement denying the Petition for Peremptory Writ of Mandate wherein the Court Ordered the Board to vacate the Proposed Decision of Administrative Law Judge Marilyn Wong, dated May 17, 1999, and accept and issue, as the Final Decision of the Board its August 12, 1999, Decision, in the above-entitled protest, by the Public members of the Board.

This matter was taken off the agenda because the Orange County Superior Court has not issued an order consistent with the Appellate Court's instructions. This matter is tentatively scheduled for the June 12, 2001, General meeting.

7. UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, THE CORRECTIVE ACTION PLAN, AND PROPOSAL RE: CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE

The members were provided with a memorandum from Tom Novi and Robin Parker updating the corrective action taken for each audit finding, and a matrix providing the chronology for each. Ms. Parker provided an overview of the Board's compliance with the Audit Findings and Corrective Action Plan. She indicated that the Board was in full compliance and no outstanding issues remained unaddressed. Mr. Flesh requested that Audit Finding 21 be clarified in the March 27, 2001, memorandum provided to the members, to reflect that the Board's exempt entitlement had not yet been loaned to the Department of Motor Vehicles. Furthermore, Mr. Flesh requested that this agenda item be updated each year and scheduled for the Board's meeting in April.

8. CONSIDERATION OF BOARD MEMBERS SERVING ON THE VARIOUS COMMITTEES - EXECUTIVE COMMITTEE

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the various committee member vacancies. After a brief discussion, it was determined that Mr. Skobin would serve as a member on the Administration Committee with Mrs. Brogin, Chair. Mr. Wilson would serve as a member on the Board Development Committee with Mr. Soteras, Chair. Mr. Wilson requested that he be removed from serving in an ad hoc capacity on the Administration Committee for purposes of interviewing hearing officers. Mr. Flesh indicated that Mr. Bayuk would move to Chair of the Fiscal Committee. Mr. Stevens indicated that he would be available to assist Mr. Bayuk on the Fiscal Committee until the Board receives its ninth member. The composition of the Board's committees are as follows:

Committee	Chair	Member
Executive Committee (Audit Review Committee)	Tom Flesh	Fritz Hitchcock
Administration Committee	Wendy Brogin	Alan Skobin
Board Development Committee	Sol Soteras	David Wilson
Fiscal Committee	Edward Bayuk	Vacancy
Policy and Procedure Committee	Glenn Stevens	David Wilson

9. CONSIDERATION OF THE BOARD'S POLICY CONCERNING GIFTS AND HONORARIA - EXECUTIVE COMMITTEE

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the Board's policy on accepting gifts and honoraria as contrasted to the Political Reform Act ("Act"). Mr. Novi explained that the Board's policy which prohibits members and staff from accepting gifts and honoraria is more restrictive than the Political Reform Act. In general, the Act provides for a limitation on gifts received by state board members as follows:

- ◆ Gifts provided for or arranged by a lobbyist or lobbying firm if the lobbyist or firm are registered to lobby the member or the employee's agency are prohibited if the aggregate value exceeds \$10 per calendar month from a single lobbyist or lobbying firm.
- ◆ State board members may not accept gifts aggregating more than \$320 from any other single source if that gift would have to be reported on the recipient's Statement of Economic Interests (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported.

With regards to honoraria, the Act provides that members of state boards may not receive honoraria from any source which would be required to be reported on the Form 700 for that official.

Mr. Skobin moved to adopt a policy which conforms to the standards of the Act. Mr. Wilson seconded the motion. The motion carried unanimously.

10. UPDATE CONCERNING THE NUMBER OF MONTHLY HITS TO THE BOARD'S WEB SITE AND WHERE INFORMATION IS BEING SOUGHT - ADMINISTRATION COMMITTEE

The members were provided with a memorandum and chart from Tom Novi and Michael Dingwell concerning the number of user hits to the Board's web site. Mr. Dingwell explained that the Consumer Mediation Request form (formerly Complaint Form) received the most hits for the first quarter of 2001. Mr. Dingwell noted that there were no hits pertaining to dealer issues in the top five hits. Mr. Hitchcock suggested that we notify the dealers of the existence of

the Board's website via the *In-Site*.

3. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the status of the collection of fees for the Arbitration Certification Program. Mr. Novi reported that the fee collection was almost complete and only one manufacturer had not responded. (Subsequent to the meeting, all manufacturers have responded and paid the appropriate fees).

4. **CONSIDERATION OF PROPOSED REVISIONS TO BOARD CASE MANAGEMENT PROCEDURES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with an update and memorandum from Tom Novi and Michael Dingwell concerning proposed revisions to the Board's case management procedures. Additionally, the members received Michael J. Flanagan's January 17, 2001, comments, and joint comments dated April 5, 2001, submitted by Mr. Flanagan and Kenneth J. Murphy. Mr. Dingwell explained that Messrs. Flanagan and Murphy's comments would be addressed in the second phase of this project (proposed revisions which require statutory and/or regulatory changes). In sum, the Committee's recommendation proposes the following revisions to the Board case management procedures:

- ◆ In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate ALJ for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment.
- ◆ In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance which would violate the above-referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time, will also be referred to the assigned "merits" ALJ for review.

Mr. Flesh moved to adopt the Committee's recommendation. Mr. Hitchcock seconded the motion. The motion carried unanimously. Mr. Flesh requested that this matter be reviewed in twelve (12) months. Mr. Skobin clarified that this matter would be revisited in a year but would not "sunset" in a year.

5. **CONSIDERATION OF THE LICENSEES WITHIN THE BOARD'S JURISDICTION  
FOR PURPOSES OF COLLECTING THE ANNUAL BOARD FEE (13 CCR § 553)  
- POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning a detailed review of the manufacturers and distributors from which it collects annual fees. Additionally, those entities licensed as "auto commercial" or "motorcycle" by the Department of Motor Vehicles ("DMV") were analyzed to ascertain which fall within the purview of the Board's jurisdiction. The analysis was based on the staffs' interpretation that numerous licensees exist who do not produce motor vehicles, are specialty in nature and do not manufacture motor vehicles regularly used on the highways, and/or do not have a traditional dealer network. Ms. Parker indicated that the issue of the interpretation of licensees within the Board's jurisdiction was broken down into several options:

- (1) Maintain the Status Quo: Continue to collect fees from all manufacturers and distributors licensed by DMV as "auto commercial" and "motorcycle" regardless of the type of product manufactured or distributed, whether there is a franchise relationship, or whether any product is sold in California, unless specifically excluded by the Vehicle Code.
- (2) Eliminate Licensees Based Solely on Product: Based solely on the type of product manufactured or distributed, eliminate those licensees that are legally outside of the Board's jurisdiction because they do not produce motor vehicles regularly used on highways.
- (3) Eliminate Licensees Based on Product and Promulgate Rulemaking to Eliminate Those Licensees Who Lack a Franchise Relationship: Establish a two-prong test for determination of jurisdiction and whether to collect fees from a licensee. First, analyze the product manufactured or distributed to determine if it is excluded from the Board's jurisdiction by Section 3051 or because it is not self-propelled or for regular use on the highway. These manufacturers and distributors would not be charged the annual Board fee, nor, arguably would the Board have jurisdiction over them. Second, if the Board has jurisdiction over the product, analyze how the product is distributed to consumers, i.e., through a dealer network, via manufacturer representatives, or through a bid process. Only those licensees that have a

dealer network (a franchise relationship) would be charged fees for purposes of the Board's annual fee. Section 553 of the regulations would be amended to apply only to franchisees and franchisors. Those licensees without a franchise relationship would not be charged the annual fee. This interpretation would be reflected in a regulatory change that would define more specifically licensees who would be charged the annual fee.

The staff recommended adopting option 3. Mr. Hitchcock moved to adopt Option 2 of the memorandum. Mr. Soteras seconded the motion. Mr. Skobin clarified that the members were not adopting the full staff recommendation, but only adopting the staff recommendation as to the fees collected in July 2001. The motion carried unanimously. There was additional discussion concerning the members revisiting this issue next year concerning the proposed rulemaking.

6. **CONSIDERATION OF PROPOSED RULEMAKING CLARIFYING THAT NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS WHO OPERATE UNDER A FRANCHISE ARE WITHIN THE BOARD'S JURISDICTION FOR PURPOSES OF COLLECTING THE ANNUAL BOARD FEE (13 CCR § 553) - POLICY AND PROCEDURE COMMITTEE**

In light of the Board's decision concerning Agenda Item 13, this matter was taken off the agenda.

7. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

**a. Bills that impact the Board.**

- (1) Senate Bill 774.
- (2) House of Representatives Bill 1296.

**b. Bills of general interest.**

- (1) Senate Bill 91.
- (2) Senate Bill 481.

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and bills of general interest. The summary analyzed the current law, the proposed legislation, and the impact on the Board. Ms. Parker provided an overview of Senate Bill 774 (Senator Margett) which would add recreational vehicles to the list of licensees within the Board's jurisdiction. This bill was recently amended, and Ms. Parker indicated that a copy would be forwarded to the members. Additionally, Ms. Parker discussed House of Representatives Bill 1296 (Congresswoman Bono) which would permit dealers to reject mandatory arbitration provisions and proceed immediately before the Board. Ms. Parker briefly addressed Senate Bill 91 (Senator Figueroa) and Senate Bill 481 (Senator Speier). Senate Bill 481

was also amended and would be provided to the members.

8. STATUS REPORT ON THE PROTESTS WHICH WERE ISSUED ORDERS TO SHOW CAUSE WHY THE MATTER SHOULD NOT BE SET FOR HEARING - POLICY AND PROCEDURE COMMITTEE

1. Cypress Coast Ford Lincoln-Mercury vs. Ford Motor Company, Ford Division and Lincoln-Mercury Division  
Protest No. PR-1589-97
2. Quaid Imports, dba Quaid Nissan vs. Nissan Motor Corporation, U.S.A.  
Protest No. PR-1653-99
3. Gardena Nissan, Inc., dba Gardena Nissan vs. Nissan North America, Inc.  
Protest No. PR-1715-00
4. Ogner Motor Cars, Inc. vs. Ferrari North America, Inc.  
Protest No. PR-1717-00

As a result of the March 6, 2001, General meeting, Orders to Show Cause why the matter should not be set for hearing were issued in the above-referenced matters. Counsel for the parties were requested to jointly file a written response detailing the status of the matter, a proposed date for disposition of the case, and a timetable outlining the dates for discovery completion and a date for a hearing on the merits. The Public members were provided with those joint responses. Mr. Dingwell informed the members that the *Cypress Coast Ford Lincoln-Mercury* protest had settled. Mr. Flesh moved to grant *Quaid Imports, dba Quaid Nissan* and *Gardena Nissan, Inc., dba Gardena Nissan* a 30-day stay pending resolution of the protests. Furthermore, a six-month stay would be granted in the *Ogner Motor Cars, Inc.* protest. Mr. Stevens seconded the motion. The motion carried unanimously.

9. EXECUTIVE DIRECTOR'S REPORT

The members were provided with a copy of the Executive Director's Report and Report on Administrative Matters which identified all pending projects,



10. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 1:15 p.m.

Submitted by

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TOM NOVI  
Executive Director

APPROVED: \_\_\_\_\_

Robert T. (Tom) Flesh  
President  
New Motor Vehicle Board